

SERVICE DATE—APRIL 3, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1103X

RUSK COUNTY RURAL RAIL DISTRICT—ABANDONMENT EXEMPTION—IN RUSK  
COUNTY, TEX.

Digest:<sup>1</sup> This decision allows the Rusk County Rural Rail District to end its common carrier obligation to provide freight rail service over a 0.9-mile line of railroad in Rusk County, Tex.

Decided: April 1, 2013

By petition filed on January 18, 2013,<sup>2</sup> the Rusk County Rural Rail District (RCRRD) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to abandon a 0.9-mile portion of its Henderson-Overton Branch Spur, between milepost 15.2 and milepost 16.1, in Rusk County, Tex. (the Line). The Line is the 0.9-mile segment at the end of the Henderson-Overton Branch Spur, which extends into and terminates in downtown Henderson. The Line traverses United States Postal Zip Code 75652. Notice of the petition was served and published in the Federal Register on February 7, 2013 (78 Fed. Reg. 9,108).

For the reasons discussed below, the Board will grant the exemption from 49 U.S.C. § 10903, thereby authorizing RCRRD to abandon the Line, subject to standard employee protective conditions.

BACKGROUND

RCRRD states that it is a political subdivision of the State of Texas established by the Rusk County Commissioners Court to preserve and expand rail service for the benefit of the businesses and citizens of Rusk County. According to RCRRD, it purchased the Henderson-

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> RCRRD submitted its petition for exemption on October 1, 2012. On October 9, 2012, however, RCRRD sought a waiver of the \$6,500 filing fee under 49 C.F.R. § 1002.2(e)(1). The Board granted RCRRD's request for waiver of the filing fee on January 18, 2013. Thus, January 18, 2013 is considered the filing date of RCRRD's petition.

Overton Branch Spur, an approximately 14-mile line of railroad from Overton, Tex. to Henderson, Tex., in 2010 from the Union Pacific Railroad Company.<sup>3</sup> RCRRD states that the Henderson-Overton Branch Spur was designed to terminate in the heart of Henderson's downtown housing district, consistent with city planning practices when the spur was constructed. RCRRD, however, asserts that changes in land use and business markets have made it problematic for the Henderson-Overton Branch Spur to terminate in downtown Henderson. As such, RCRRD states that it is seeking to abandon the Line (that is, the last 0.9-mile portion of the Henderson-Overton Branch Spur, which reaches into downtown Henderson) because the spur's operator, Blacklands Railroad Company (Blacklands),<sup>4</sup> shippers, and Henderson residents prefer that the spur terminate north of downtown Henderson in a more industrialized area better suited for freight rail operations.

RCRRD asserts that abandonment is warranted because the Line is no longer in operation and is no longer needed for transportation of commodities. According to RCRRD, no rail traffic has moved over the Line since August 2011, and RCRRD is unaware of any new shippers that may be interested in relocating to the Line. RCRRD states that, since August 2011, all rail traffic on the Henderson-Overton Branch Spur has terminated approximately one mile north of downtown Henderson (*i.e.*, about where the proposed abandonment would begin). Should RCRRD receive abandonment authority for the Line, RCRRD states that it would continue to provide rail service through its operator, Blacklands, on the remaining 13 miles of the Henderson-Overton Branch Spur, with service terminating one mile north of the City of Henderson. Because there are neither shippers nor any current freight rail traffic on the Line, RCRRD states that no rail traffic will be diverted as a result of the abandonment.

RCRRD states that it also seeks authority to abandon the Line to avoid operation and maintenance costs on the Line and because the City of Henderson has expressed interest in purchasing the Line's corridor in connection with a road construction project. RCRRD states that it intends to sell the underlying property to the City of Henderson for that purpose.

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<sup>3</sup> See Rusk Cnty. Rural Rail Dist.—Acquis. Exemption—Union Pac. R.R., FD 35330 (STB served Dec. 11, 2009).

<sup>4</sup> Blacklands obtained Board authority to lease and operate the Henderson-Overton Branch Spur in 2009. See Blacklands R.R.—Lease & Operation Exemption—Rusk Cnty. Rural Rail Dist., FD 35327 (STB served Dec. 11, 2009). On February 4, 2013, Blacklands filed a petition for exemption to discontinue lease operations over the Line. In a decision issued today, the Board has granted that petition. See Blacklands R.R.—Discontinuance Exemption—in Rusk Cnty., Tex., AB 1108X (STB served April 3, 2013).

According to RCRRD, there is no alternative to abandonment. RCRRD asserts that, in balancing the reduced burden to it and interstate commerce against the absence of harm to shippers and local interests, the balance clearly favors abandonment. No shippers or other entities filed comments in response to the petition.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail line may not be abandoned without prior approval from the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Here, detailed scrutiny of the proposed abandonment under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy. The Line is not currently in operation and there has been no freight rail traffic on the Line since August 2011. Since that time, all rail traffic on the Henderson-Overton Branch Spur has terminated approximately one mile north of the City of Henderson. By granting abandonment, RCRRD would avoid unnecessary maintenance and operational costs, while at the same time furthering a road construction project for the benefit of the City of Henderson. By minimizing the administrative expense of the application process, an exemption would minimize the need for Federal regulatory control over the rail transportation system and would reduce regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). An exemption, therefore, would also foster sound economic conditions and encourage efficient management by permitting the rationalization of an unnecessary common carrier rail line, consistent with 49 U.S.C. §§ 10101(5) and (9). Other aspects of the rail transportation policy will not be adversely affected by the use of the exemption process.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power because there are no active shippers on the Line. Further, no shipper or other party has filed in opposition to the proposed abandonment.<sup>5</sup>

Employee Protection. Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose the employee protective conditions set forth in Oregon Short Line—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

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<sup>5</sup> Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Environmental Review. RCRRD has submitted a combined environmental and historic report and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 C.F.R. § 1105.11. The Board's Office of Environmental Analysis (OEA) has examined the environmental and historical report, verified RCRRD's data, and analyzed the probable effects of the proposed action on the quality of the human environment.

OEA served an Environmental Assessment (EA) on February 12, 2013, concluding that, as proposed, abandonment of the Line would not significantly affect the quality of the human environment and recommending that no environmental conditions be imposed on any decision granting abandonment authority. Comments to the EA were due by March 4, 2013. No comments to the EA were filed. Accordingly, based on OEA's recommendation, we conclude that the proposed abandonment, if implemented, would not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the abandonment by RCRRD of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line—Abandonment—Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).
2. An Offer of Financial Assistance (OFA) under 49 C.F.R. § 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by April 15, 2013, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee of \$1,600. See 49 C.F.R. § 1002.2(f)(25).
3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**
4. Provided no OFA has been received, this exemption will be effective on May 3, 2013.
5. Petitions to stay must be filed by April 18, 2013. Petitions to reopen must be filed by April 29, 2013.
6. Pursuant to the provisions of 49 C.F.R. § 1152.29(e)(2), RCRRD shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RCRRD's filing of a notice of consummation by April 3, 2014, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to

consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.